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REQUEST FOR PROPOSALS

FOR

LEGAL SERVICES

Project 2019-05

Interurban Transit Partnership
300 Ellsworth Ave. SW
Grand Rapids, MI 49503
(616)456-7514

Sequence of Events	Date
Request For Proposal issued	December 3, 2018
Clarifications/Questions	December 11, 2018
Response to Clarifications/Questions	December 14, 2018
Proposals received	December 27, 2018 by 2:00 pm
Oral presentations of Selected Firms	January 10 & 11, 2019
Recommendation for Board action	January 30, 2019
Legal services contract takes effect	February 1, 2019

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SECTION 1: PUBLIC NOTICE

Sealed proposals for the provision of legal services will be received at the Interurban Transit Partnership (ITP) offices, 300 Ellsworth Ave. SW, Grand Rapids, MI 49503-4018, until Thursday, December 27, 2018, at 2:00 p.m., local time.

The ITP Board reserves the right to postpone, accept, or reject any and all bids, in whole or in part, on such basis as the ITP Board deems to be in its interest to do so, subject to the rules and regulations set forth by the Federal Transit Administration (FTA) and the Michigan Department of Transportation (MDOT).

No bid may be withdrawn for at least sixty (60) days after the scheduled closing time of the bid. One (1) original and three (3) copies and one (1) digital copy of the bid shall be submitted to the Senior Procurement Specialist (SPS).

Judy DeVries-Eppinga
SPS
(616) 774.1176

Interurban Transit Partnership
300 Ellsworth Ave. SW
Grand Rapids, MI 49503

SECTION 2: SCOPE OF SERVICES

2.1 AGENCY INFORMATION

The Interurban Transit Partnership (ITP) operates and contracts for the operation of transportation services within metropolitan Grand Rapids and adjacent townships of Kent and Ottawa counties. ITP is a public corporation chartered under *Act 196 of 1986* of the State of Michigan. ITP is funded by state and federal grants, local property tax revenue, sale of services and fare box receipts.

ITP requires general legal services including, trial and appellate advocacy in the prosecution and defense of matters, as well as, legal opinions and counsel on a wide range of topics. This proposal is expected to culminate in the award of one or more non-exclusive contracts for the above referenced services. The contract(s) will be for a five-year term with an additional five, one year extensions possible. Claims currently in litigation would not be reassigned to new counsel. This contract is for new litigation files assigned to counsel on or after contract award.

The areas that services are required are 1) General Corporate and 2) Labor and Employment. ITP reserves the right to award up to two contracts. Proposers may submit proposals for either one or both of the service areas.

2.2 GENERAL SPECIFICATIONS AND PROVISIONS

This is a requirements contract; there is no guarantee of a specific level of legal services required, in either number of cases or dollar amount. Average annual billings for the past four years amount to approximately \$275,000.

All materials generated by this contract shall be the property of ITP, including without limitation, all correspondence, discovery, pleadings, legal opinions, research court filings, books, papers, electronic media, etc.

One attorney must be designated as a liaison to the Authority, and who shall serve as a "lead attorney" who will be responsible for the general and day-to-day functioning of the business transacted.

Only attorneys previously approved by ITP may perform work or appear on behalf of the Authority. Resumes of those attorneys who it is anticipated will work on this account should be included with the proposal. The firm shall notify ITP if an attorney leaves the firm, and advise who will be replacing them.

Each matter must be identified separately on the monthly invoice, and must include the following minimum information: Date work performed, attorney or staff

person performing the work, a brief description of the work performed, and the time and amount.

The Contractor will be responsible for sanctions, fines, interest and any other additional costs imposed by Court Rule or the court in which a matter is pending, which results from negligence, mismanagement and/or delays that are not directly attributable to ITP's employees or agents.

Costs typically described as overhead and other costs of doing business do not constitute allowable billing. Fees not allowed include local parking, mileage for local travel, and subscription fees. Non-local travel is payable for actual mileage not to exceed the Federal Government allowance rate. ITP will reimburse actual costs only if the proposal includes an itemized list of any reimbursable costs and billable fees associated with such items. Any item not included in the proposal will not be considered for future billing. Proposal must contain all associated fees and include consumables.

ITP staff, ITP's independent auditors, as well as state and federal auditors, insurance carriers and/or others may from time to time ask to audit any or all of the matters performed. The Contractor shall honor such requests, if made by the appropriate ITP staff person, and then, in full compliance with applicable law. Familiarity with the FOIA, Open Meetings Act and/or other applicable regulations is required.

2.3 GENERAL CORPORATE LEGAL SERVICES

ITP's needs for General Corporate legal services include a variety of topics. Some of the topics that legal opinions have been sought in the past include, but are not limited to the following:

- ✓ Contract Law: Includes negotiation, interpretation and dispute resolution
- ✓ Environmental Law
- ✓ Administrative Law: Including interpretation of governmental and agency rulings, particularly FTA and MDOT, Act 196 and millage issues.
- ✓ General and Public Liability, insurance protection and liability defense.
- ✓ Corporate and Commercial Law
- ✓ Intellectual Property and Licensing
- ✓ Errors and Omissions
- ✓ Real Estate and bonds
- ✓ Electronic media issues
- ✓ Taxation
- ✓ Federal and State Grants
- ✓ Defense - including defending the Authority officers and employees in all actions arising from the delivery of its transit service and the official duties of the Board and staff.

Provide advice and counsel to the ITP Board and staff in regard to policies, procedures, legislative and regulatory issues, and any other such matters as the Board or Executive Director deem appropriate. Conduct research and prepare written opinions as requested. Attend ITP Board meetings upon request, or as needed, to receive direction and/or provide counsel.

2.4 LABOR AND EMPLOYMENT LEGAL SERVICES

ITP's need for Labor and Employment legal services includes a variety of topics. The Local 836 of Amalgamated Transit Union (ATU) represents the approximately three hundred eight (308) bus operators and maintenance personnel. The bargaining unit does not represent approximately seventy four (74) administrative employees. Employment policies are administered by ITP's Human Resources Department. Some of the topics that legal opinions have been sought in the past include, but are not limited to the following:

- Workers Compensation: Includes coordination with ITP staff and third party administrator, to mitigate and defend contested claims.
- Unemployment Compensation: Includes representation at various levels of appeals.
- Discrimination: Includes the investigation of claims, correspondence with governmental agencies, representation in hearings, resolution of disputes.
- Sexual Harassment: Includes investigation of claims, investigative conferences, hearings, and resolution of complaints.
- Collective Bargaining: Includes development of strategies, development of contractual language, resolution of disputes, advice and counsel pertaining to legal issues.
- Grievances: Includes identification of issues, development of responses.
- Labor Arbitrations: Includes representation before hearing officers, negotiation of issues and resolutions, etc.
- Labor Law: Includes local, state, and federal laws and regulations.
- Wages and Benefits: Includes advice and counsel on existing and future wages and benefits at ITP and identification and definition of issues. Also personnel and pension issues.
- Advice on contracts: Includes legal requirements pertaining to labor issues
- Transit: Includes areas specific to the transit industry such as Drug Free Workplace, FTA Drug and Alcohol Program, 13-C Requirements, Public Employee Relations Act, ADA, FMLA, CDL, etc.

ITP reserves the right to split this contract award and to contract at its discretion with other firms for legal services related to this contract. These contracted services may be for a particular legal matter or for a particular area of legal services. ***For this reason, the ITP is asking for prices in two specific categories which correspond to the two categories in the Scope of Services above. Those two categories are General Corporate Services and Labor and Employment Services.***

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SECTION 3: REQUIREMENTS FOR PROPOSALS

Proposing firms shall submit, at a minimum, the following information in their proposal.

3.1 COVER LETTER

The proposal must include a cover letter which identifies the proposing firm/organization, mailing address, contact person, and telephone number. The cover letter must acknowledge the receipt of all addenda issued to the RFP, and be signed by the individual who is authorized to negotiate and execute a contract on behalf of the proposing firm.

3.2 FIRM QUALIFICATIONS

The proposal shall include a general description of the firm and its background as it relates to the needed services. Specific information regarding the firm shall be submitted and includes:

- A) Information regarding the firm's previous experience with similar or related services for a public sector client as described in Section 2. It should contain a brief description of these services and responsible staff. Specific experience with public transit agencies is highly desirable but not a requirement.
- B) Information demonstrating the firm's capabilities to perform all aspects of these particular services.

3.3 STAFF QUALIFICATIONS

The proposals shall include a general description of the firm's staffing and their background as it relates to these services. Specific information regarding the staff shall be submitted and includes:

- A) Identification and qualification of the person(s) who will provide or coordinate legal affairs for ITP. Specify by category, such as: Labor Relations, General Contract, Real Estate law, Environmental law, etc.
- B) Information regarding the staff's previous experience with similar or related service.
- C) Information regarding the expertise and experience of staff person(s) to be assigned to work on the ITP account in the areas of legal practice listed in Section 2.
- D) Identification of work to be subcontracted to another firm(s). The proposal must include the above firm and staff qualifications information for each subcontractor, a description of the services the firm(s) will be performing and estimated fees for their services.

3.4 FINANCIAL PROPOSAL

The financial proposal shall include a fee schedule of the various services that will be furnished. The schedule should cover a five (5) year period. A format for the fee schedule is suggested below:

Billing Rate Summary In Fee Per Hour
Contract Period February 1, 2019 through January 30, 2024
 (hourly rates)

	General Corporate	Labor and Employment	Meetings
Partners			
Associates			
Legal Assistants			
Staff			
Clerical			

Contract Period February 1, 2019, through January 31, 2024

General Corporate Services
 (hourly rates by fiscal year)

	Year 1	Year 2	Year 3	Year 4	Year 5
Partners					
Associates					
Legal Assistants					

Contract Period February 1, 2019 through January 31, 2024

Labor and Employment Services
(hourly rates by fiscal year)

	Year 1	Year 2	Year 3	Year 4	Year 5
Partners					
Associates					
Legal Assistants					

Proposing firms are free to expand or delete the categories in this form or to use a table of their own design so long as the maximum billing rates for various classifications of professional and support services are disclosed.

Please also provide the following information:

- Incremental Billing Rates after Minimum Time _____
- Minimum time billed _____
- Copy cost per sheet _____
- Fax costs per sheet _____
- Travel time costs _____

3.5 REFERENCES

Representative clients in each area of practice should be listed as references. This information will be kept confidential to the maximum extent allowed by Michigan law.

3.6 POSSIBLE CONFLICTS OF INTEREST

The proposal should state whether or not the firm represents any labor unions or any public employee bargaining agents. Any potential conflicts of interest which the firm may encounter in rendering service should be identified, including but not limited to:

- A) Any general representation of any ITP member governmental unit.
- B) Membership of any partner or associate of the firm on the council or other governing body of any member government.

The ITP cannot guarantee that conflict of interest issues will not arise. We would hope that to the extent possible, a consensual agreement can be worked out

regarding the area of conflict. That being said, the rules on conflict of interest that exist in the State of Michigan do apply. The parties involved may have to seek additional (new) legal counsel if no agreement can be agreed upon.

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SECTION 4: EVALUATION OF PROPOSALS

Proposals will be evaluated according to Firm Qualifications, Staff Qualifications, and Budget. The criteria are listed in their relative order of priority (Section 4.1 – 4.3) for evaluation purposes.

4.1 FIRM QUALIFICATIONS

The qualifications of each responding firm will be evaluated based on their demonstrated ability to perform the services described in the Scope Of Work. Work performed by any subcontractor will also be evaluated.

4.2 STAFF QUALIFICATIONS

The qualifications of staff and subcontractors assigned to the ITP account will be evaluated based on their expertise and experience in furnishing the service described in the Scope of Work.

4.3 PROPOSED BUDGET

Proposed price, both initial and over the term of the Agreement, is a consideration that will be weighed in relation to other evaluation criteria. Costs making up the price will be evaluated to determine reasonableness and that all costs are allowable and allocable.

4.4 FIRM CERTIFICATION

Firms must comply with the DBE participation requirements, if any, to be considered for contract award. See section 6, Number 28.

4.5 EVALUATION AND SELECTION PROCESS

The process of evaluating and selecting attorneys will be made in accordance with the following schedule.

Sequence of Events	Date
Request For Proposal issued	December 3, 2018
Clarifications/Questions	December 11, 2018
Response to Clarifications/Questions	December 14, 2018
Proposals received	December 27, 2018 by 2:00 pm
Oral Presentations of Selected Firms	January 10 & 11, 2019
Recommendation for Board action	January 30, 2019
Legal services contract takes effect	February 1, 2019

4.6 COMMUNICATIONS AND REQUESTS

A All correspondence and/or contact in regard to any aspect of this solicitation or offers shall be with the Senior Procurement Specialist (SPS). Offerors and their representatives shall not make any contact with or communicate with any members of ITP, or its employees and consultants in regard to any aspect of this solicitation or offers.

B At any time during this procurement up to the time specified, Offerors may request in writing, a clarification or interpretation of any aspect, or a change to any requirement of the RFP or any addenda to the RFP. Such written requests shall be made to the Purchasing Manager. ITP will not respond to oral requests. Any request for a change to any requirement of the Contract documents must be fully supported with pertinent information evidencing that the exception will result in a condition equal to or better than that required by the RFP, without substantial increase in cost or time requirements. Any responses to such written requests shall be provided by ITP in the form of addenda only. Only written responses provided as addenda shall be official and all other forms of communication shall not be binding on ITP.

C If it should appear to a prospective Offeror that the performance of the work under the Contract, is not sufficiently described or explained in the RFP or Contract documents, or that any conflict or discrepancy exists between different parts or with any federal, state, or local law, ordinance, rule, regulation, the Offeror shall submit a written request for clarification to ITP within the time period specified.

Addenda to RFP

A. ITP reserves the right to amend the RFP at any time. Any amendments to or interpretations of the RFP shall be described in written addenda. Notification of the addendum will be mailed or delivered to all such prospective Offerors officially known to have received the RFP and to the address provided by each prospective Offeror. Failure of any prospective Offeror to receive the notification or addendum shall not relieve the Offeror from any obligation under its proposal as submitted or under the RFP, as clarified, interpreted or modified. All addenda issued shall become part of the RFP. Prospective Offerors shall acknowledge the receipt of all addenda in their proposals. It will be ITP's sole option to disqualify a proposal for failure to acknowledge in the proposal the receipt of addendum.

B. If ITP determines that the addenda may require significant changes in the preparation of proposals, the deadline for submitting the proposals may be postponed by the number of days that ITP determines will allow Offerors sufficient time to revise their proposals. Any new due date will be included in the addenda.

4.7 EVALUATION PROCEDURES

A. Proposals will be analyzed for conformance with the instructions and requirements of the RFP and Contract documents. Proposals that do not comply with these instructions and do not include the required information may be rejected as insufficient. ITP reserves the right to request an Offeror to provide any missing information and to make corrections. Offerors shall pay close attention to and strictly follow all instructions. Submittal of a proposal will signify that the Offeror has accepted the whole of the Contract documents, except any conditions, exceptions, or deviations. Any such conditions, exceptions, or deviations, which do not result in the rejection of the proposal, are subject to evaluation under the criteria of Proposal Evaluation Criteria.

B. Evaluations will be made in strict accordance with all of the evaluation criteria and procedures. ITP will select for any award the highest ranked proposal from a responsible Offeror, which does not render this procurement financially infeasible and is judged to be most advantageous to ITP based upon consideration of the Evaluation Criteria.

4.8 EVALUATION OF PROPOSALS

The evaluation committee will review the proposals for the following:

A. Offeror has followed the instructions of the RFP and included sufficient detail information, such that the proposal can be evaluated. Any deficiencies in this regard must be determined by ITP to be either a defect that ITP will waive in accordance with Acceptance/Rejection of Proposals or that the proposal can be sufficiently modified to meet these requirements.

B. Proposal price will not render this procurement financially infeasible, or it is reasonable that such proposal price might be reduced to render the procurement financially feasible. Any extreme proposal deficiencies, which may render a proposal unacceptable, will be documented.

C. No information, financial or otherwise, will be provided to any Offeror about any of the proposals from other Offerors during the evaluation period.

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SECTION 5: PROPOSAL SUBMISSION

ITP will receive sealed proposals until Friday, December 27, 2018 at 2:00 p.m., local time. Proposals shall be submitted to:

Judy DeVries-Eppinga
Senior Procurement Specialist
Interurban Transit Partnership
300 Ellsworth Ave. SW
Grand Rapids, MI 49503-4018

One (1) original, three (3) copies and one (1) digital copy of the proposal are to be submitted. Proposers should complete the enclosed "Sealed Proposal" label and attach it to the outside of the envelope containing the proposal. ITP assumes no responsibility for the premature opening of sealed proposals which do not have this label attached. If no "sealed Proposal" label is included, please state on the outside of the envelope: "Legal Services RFP".

If the proposal is submitted by mail, it shall be mailed a minimum of three (3) days prior to the submittal date. The proposal envelope shall be postmarked by the U.S. Postal Service or other mail service. Postage meter dates are not acceptable. Proposals mailed less than three (3) days prior to the submittal date and received after the submittal deadline will not be accepted. Proposals must be accompanied by a signed statement acknowledging the receipt of any addenda issued to this RFP.

Additional information regarding the submission of the proposal may be obtained by contacting Judy DeVries-Eppinga, ITP SPS at jdevries-eppinga@ridetherapid.org or by fax 616-774-1195.

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SECTION 6: INSTRUCTIONS TO BIDDERS

1) FUNDING

This Project will be funded with the assistance of capital improvement grants from the Federal Government under the Federal Transit Act and the Michigan Department of Transportation (MDOT). The successful bidder will be required to comply with all terms and conditions prescribed for third party contracts in a grant contract between the United States of America and ITP. This grant contract is available for examination by prospective bidders at the ITP offices.

2) PROJECT BUDGET

The budget for this Project will be funded through financial assistance grants from the Federal Transit Administration (FTA) and Michigan Department of Transportation (MDOT). The total Project budget will be determined by the final negotiated price between ITP and the successful bidder.

3) PRE-PROPOSAL CONFERENCE

-NOT APPLICABLE-

A Pre-Proposal Conference will be held for all interested bidders on _____, _____, at _____ at the ITP Administrative Offices. ITP reserves the right to postpone answers to any questions raised at this meeting until a later date. Any oral explanations provided by ITP during this meeting will not be binding upon ITP until they are reduced to a written form by ITP and given to all interested bidders. Bidders seeking a written response by ITP to their questions at the Pre-Proposal Conference are requested to submit their questions in writing to ITP in advance. ITP will make every effort available to respond at the Pre-Proposal Conference. Attendance at the Conference is not mandatory, but is encouraged by ITP.

4) TYPE OF CONTRACT

The Contract for this Project shall be a firm fixed price type.

5) PROJECT NUMBER(S)

All bidders and Contractors will include the FTA Project Number in all correspondence with ITP and with the FTA. The FTA Project Number for this Project is **2019-05**.

6) USE OF "INTERURBAN TRANSIT PARTNERSHIP" NAME IN CONTRACTOR ADVERTISING OR PUBLIC RELATIONS

ITP reserves the right to review and approve any advertising copy related to this Project in any way prior to publication. The successful bidder will not allow such copy to be published in their advertisements or public relations programs until submitting such copy and receiving prior

written approval from ITP. The successful bidder agrees that published information relating to this Project will be factual and in no way imply that ITP endorses the successful bidder's firm, service or product.

7) INTENT OF SPECIFICATIONS

It is the intent of these specifications to provide completed Project of substantial and durable construction in all respects, which will be most suitable and advantageous for ITP. Experimental or unproven equipment, materials or design will not be accepted without prior review and written acceptance by ITP.

8) APPROVED EQUALS AND DEVIATIONS

All Proposals must be in strict compliance with the requirements and provisions of these specifications, including the provisions herein regarding "approvals", "approved equals", and "deviations". Where a feature, component or item is specified by brand name in these specifications, the words "or approved equal" will apply. Where the approval of ITP is specifically required by these specifications in connection with a particular feature, or if the bidder proposes to submit a proposal containing "approved equals" or "deviations" from specific requirements of these specifications, the bidder must obtain such approval, confirmed in writing, prior to the date for the receipt of proposals. With respect to "approved equals" or "deviations", the details of same and the reasons and justifications therefore must be submitted to ITP, including a statement whether the bidder has previously furnished or offered to furnish the item in question, is herein specified. Proposals may be submitted containing such "approvals", "approved equals", or "deviations", as are specifically approved by ITP, confirmed in writing, prior to the date for receipt of proposals. Each proposal must be accompanied by documentation regarding any such approvals granted by ITP for the proposal. Notice of any such approvals required by and/or granted to a bidder shall be furnished by ITP to other prospective bidders prior to the date for receipt of proposals. Any unapproved deviations, exceptions, substitutions, alternates, or conditional qualifications contained in a proposal may be cause for its rejection. The decision of ITP, as represented by the Executive Director, shall be final with respect to whether any proposed deviations from the specifications are acceptable. It should be understood that specifying a brand name, components, and/or equipment in this specification shall not relieve the supplier from his responsibility to produce the product in accordance with the performance warranty and contractual requirements. The supplier is responsible for notifying ITP of any inappropriate brand name, component, and/or equipment that may be called for in the specifications, and to propose a suitable substitute for consideration.

9) PROTEST PROCEDURES

The following terms, conditions and appeal procedures will apply:

- (a) ITP reserves the right to postpone the bid opening or receipt of proposals for its own convenience.
- (b) Changes to the specifications will be made by addendum only.

(c) Prime Contractors and subcontractors may make appointments to discuss the Project specifications. This, however, does not relieve them from the written documented requests required by paragraphs (d) and (f), following.

(d) Requests for approved equals, clarification of specifications, and protest of specifications must be received by ITP in writing not less than nine (9) working days before the date of the scheduled bid opening or closing date for receipt of proposals. Any request for an approved equal or protest of the specifications must be fully supported with technical data, test results or other pertinent information as evidence that the substitute offered is equal to or better than the specification requirement.

(e) ITP's replies to requests under paragraph (d) above will be emailed six (6) working days before the date scheduled for the bid opening or receipt of proposal.

(f) A protest by any adversely affected person regarding restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by the ITP Purchasing Manager two (2) working days before the date scheduled for bid opening or receipt of proposal. The formal written protest shall state the name of the protester, a description of the Project, and the facts and law upon which the protest is based, and a statement as to what relief is requested.

(g) Upon receipt of a protest, ITP shall immediately determine if the date for the bid opening or closing date for receipt of proposals should be postponed. If the bid opening or closing date is postponed, ITP will contact all Contractors and subcontractors who were furnished a copy of the specifications by ITP that an appeal has been filed and that the bid opening or receipt of proposals is postponed until a decision has been issued. Notice of the postponement will be made in writing by addendum.

(h) Representatives of ITP and the protester shall meet within twenty-four (24) hours after receipt of the protest or at such a time as mutually agreed, to discuss all substantive issues raised in the protest. Upon completion of discussion between ITP and the protester, the ITP CEO will transmit a final decision in writing to the protester within five (5) working days. The final decision will respond to each substantive issue raised in the protest. If the written decision cannot be issued within this time period, the protester will be notified in writing of the time extension. Upon issuance of the written decision, ITP will then issue appropriate addendum to reschedule the date for the bid opening or closing date for the receipt of proposal.

(i) Protests by any adversely affected person for reasons other than for restrictive specifications or alleged improprieties in the solicitation must be made in writing and received by the ITP Purchasing Manager not more than three (3) working days after the posting of the Notice of Award is made to the participating bidders. Upon receipt of a protest after Contract award, ITP shall immediately determine if work on the protested Project should be suspended until such time as the protest is resolved.

(j) Representatives of ITP and the protester shall meet within twenty-four (24) hours after receipt of the protest or at such time as mutually agreed to by both parties to discuss the protest. Upon completion of discussions between ITP representatives and the protester, ITP will issue a written decision to the protester within five (5) working days. If the written decision cannot be issued within this time period, the protester will be notified in writing of the time extension.

(k) Except as noted in paragraph (l), ITP will not open bids, receive proposals or award a contract if a formal written protest has been received and no final decision has been issued by the CEO. After the issuance of a final decision, ITP will wait a minimum of five (5) working days before opening bids or proposals or before awarding a Contract for a Project.

(l) ITP may open bids, receive proposals and award a Contract for a Project while a protest is pending final disposition when the ITP Executive Director determines that:

- * The items to be procured are urgently required;
 - * Delivery or performance will be unduly delayed by failure to make an award promptly;
- or,
- * Failure to make prompt award will otherwise cause undue harm to ITP or the Federal Government.

(m) Protester may request a reconsideration after a final decision has been issued by the ITP CEO within five (5) working days after the issuance of a final decision if new data or information becomes available that was not previously known, or there has been an error of law or regulation.

(n) The provisions of Chapter V of FTA Circular 4220.1F), are hereby incorporated and made part of the rules of ITP. Protests to the FTA by a protester must be made in accordance with FTA Circular 4220.1F. FTA will only consider a protest that alleges failure of ITP to have a written protest procedure or failure to follow such procedure. Alleged violations of a specific Federal requirement that provides an applicable complaint procedure shall be submitted and processed in accordance with that Federal regulation.

Any appeal or protest may be withdrawn at any time

10) SUBMISSION OF PROPOSALS

Sealed proposals will be accepted until Thursday, December 27, 2018, at 2:00 p.m., local time. They shall be submitted to:

Judy DeVries-Eppinga
Senior Procurement Specialist
ITP - The Rapid
300 Ellsworth Ave. SW
Grand Rapids, MI 49503

Proposals submitted to ITP shall include one (1) original, three 3 copies and one (1) digital copy.

11) SEALED PROPOSAL LABEL

The bidder should complete the enclosed "Sealed Proposal" label and attached it to the envelope containing the bid or proposal. ITP assumes no responsibility for the premature opening of sealed bids or proposals which do not have this label attached to the outside of the envelope. **See Attachment B for a mailing label template.**

12) MAILING BIDS/PROPOSALS

Bids or proposals submitted by mail shall be mailed a minimum of three (3) days prior to the bid opening date or date scheduled for receipt of proposals. Postmarks by the U.S. Postal Service or other mail delivery service is required. Postage meter dates are not acceptable. Bids or proposals which are not mailed in a timely manner and received after the scheduled bid opening or proposal submittal date will not be accepted.

13) DURATION OF OFFER

All bids or proposals shall remain in effect for a minimum of 60 days from the bid opening date or scheduled date for receipt of proposals. Offers that allow less than 60 days for acceptance by ITP will be considered non-responsive and will be rejected.

14) PROPOSAL PRICE

(a) Proposal prices shall be submitted in the prescribed form. Prices submitted in any other form may be considered non-responsive and may be rejected.

(b) Proposal prices shall be based on F.O.B. ITP, Grand Rapids, Michigan.

The price stated in any proposal submitted shall include all items of labor, materials, equipment, tools and other costs necessary to fully complete and deliver this Project pursuant to the specifications. It is the intention of these specifications to provide and require a complete Project of the type prescribed. Any item or items omitted from such specifications which are clearly necessary for the completion of such Project and its appurtenances shall be considered a portion of such Project although not directly specified or called for in these specifications.

15) TAX EXEMPTION

The ITP is exempt from payment of all Federal, State, and local taxes in connection with this Project. Said taxes shall not be included in the bid or proposal prices. The ITP will provide necessary tax exemption certificates. This provision does not relieve the Contractor from the responsibility to pay all applicable taxes for goods, services, and labor acquired in the performance of this Project.

16) DISCOUNTS

Prompt payment discounts will not be considered in the evaluation of proposals or bids. However, any offered discount will form a part of the award, and will be taken if payment is made within the discount period indicated in the offer by the bidder. As an alternative to offering a prompt payment discount in conjunction with the offer, bidders awarded Contracts may include prompt payment discounts on individual invoices.

17) PAYMENT TERMS

ITP will make payment within thirty (30) days after delivery and final acceptance of the project. The Contractor may submit invoices to ITP prior to or upon delivery. Payment will not be made without an invoice.

**18) PROJECT COMPLETION DATE
(NOT APPLICABLE)**

Bidders shall state in the bid or proposal the earliest possible date offered for completion of the Project. The date cannot exceed _____ calendar days from the date of the Notice to Proceed with the Project.

19) LATE PROPOSALS OR WITHDRAWAL OF PROPOSALS

a) Any proposal received at the ITP offices designated in the solicitation after the time specified for receipt of proposals will not be considered and will be returned to the bidder unopened.

A proposal may be withdrawn in person by the bidder or their authorized representative, provided their identity is made known and a receipt is signed for the proposal, and only if the withdrawal is made prior to the time specified for receipt of proposals.

20) DETERMINATION OF SUCCESSFUL PROPOSER

In determining the successful proposer, consideration is given to the proposer's qualification, content of proposal, and financial proposal as described in the evaluation criteria. The Contract award for this Project will be made to the proposer making the best and most advantageous offer to ITP, price considered.

21) BIDDER QUALIFICATIONS

In order to be eligible for award, bidders must be responsive and responsible.

(a) Responsive offers are those complying in all material aspects of the solicitation, both as to the method and timeliness of submission and as to the substance of the resulting Contract. Bids or proposals which do not comply with all the terms and conditions of the solicitation may be rejected as non-responsive.

(b) Responsible bidders are those prospective Contractors who, at a minimum, must:

1) Have adequate financial resources, as required during performance of the Contract.

2) Are able to comply with the required or proposed delivery or performance schedule, taking into consideration all existing business commitments.

3) Have a satisfactory record of past performance.

- 4) Have necessary technical capability to perform.
- 5) Provide evidence satisfactory to ITP that the bidder will comply with the DBE requirements.
- 6) Certify that they are not on the U.S. Comptroller General's list of ineligible Contractors.
- 7) Are qualified as a manufacturer or regular dealer of the items being offered.
- 8) Are otherwise qualified and eligible to receive an award under applicable laws and regulations.

All prospective bidders may be requested to submit written evidence verifying that they meet the minimum criteria necessary to be determined a responsible Contractor. Refusal to provide requested information may cause rejection of the bid or proposal.

22) ACCEPTANCE OF PROPOSAL

Each proposal shall be submitted with the understanding that the acceptance in writing by ITP of the offer to furnish any or all goods or services described therein shall bind the bidder on his part to furnish and deliver at the proposal price, in accordance with the conditions of said accepted proposal and specifications

23) WITHHOLDING AWARD

This solicitation for bids or proposals does not commit ITP to award a contract, pay any costs incurred in preparation of bid or proposals in response to this solicitation, or to procure or contract for good or services. Bidder shall be responsible for all costs incurred as part of their participation in the pre-award process.

24) PROPOSAL ACCEPTANCE, REJECTION, AND POSTPONEMENT

ITP reserves the right to postpone, accept, or reject any and all proposals in whole or in part, on such basis as the ITP Board deems to be in its best interest to do so, subject to the rules and regulations set forth by the U.S. Department of Transportation. Also, ITP reserves the right to accept an original offer or proposal without negotiation or without calling for a "best and final" offer.

25) USDOT/FTA CONCURRENCE FOR CONTRACT AWARD

The award of a Contract for this Project may be subject to review and concurrence by the U.S. Department of Transportation, Federal Transit Administration

26) SINGLE BID RESPONSE

If only one (1) bid is received in response to the Invitation for Bids, a detailed cost proposal may be requested of the single bidder. A cost/price analysis and evaluation and/or audit may be performed of the cost proposal in order to determine if the price is fair and reasonable.

27) DBE PARTICIPATION

In connection with the performance of this Contract, the successful bidder agrees to cooperate with ITP in meeting its commitments and goals with regard to maximum utilization of Disadvantaged Business Enterprises (DBE). The policy and obligations for maximum utilization of DBE's are herein set forth:

(a) Policy - It is the policy of the Department of Transportation that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, shall have the maximum opportunity to participate in the performance of contracts financed in whole or apart with Federal funds under this Agreement. Consequently, the DBE requirements of 49 CFR, Part 26 apply to this Agreement.

(b) DBE Obligation - ITP or its Contractor agrees to ensure that Disadvantaged Business Enterprises, as defined in 49 CFR, Part 26, have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this Agreement. In this regard, ITP or its Contractors shall take all necessary and reasonable steps in accordance with 49 CF, Part 26, to ensure that Disadvantaged Business Enterprises have the maximum opportunity to compete for and to perform contracts. ITP and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of DOT-assisted contracts.

Requirements and goals for Disadvantaged Business Enterprise participation in this Project are as follows:

A minimum of zero percent (0%) of the total contract price, as awarded, shall be established as a goal to be made available to certified DBE's. Compliance with the percentage goal may be fulfilled by DBE's performing as either:

- 1) A member of a joint venture as a prime contractor;
- 2) An approved subcontractor;
- 3) An owner-operator of equipment;
- 4) A renter of equipment to a prime contractor;
- 5) A firm manufacturing and supplying goods used in the project;
- 6) A firm supplying goods used in the project (when supplying goods, only 60 percent (60%) will be counted).

Prior to Contract award, the apparent successful bidder shall submit a written assurance of meeting the above goals and shall include names of DBE subcontractors, addresses of contact persons, a description of work to be performed and dollar values of each proposed DBE subcontract. This information shall be submitted on the attached "DBE Participation Form" furnished with this solicitation.

If the goals were not met, the bidder must demonstrate that sufficient good faith efforts were made to meet the DBE contract goals and shall document the steps he has taken to obtain DBE participation.

Failure to provide required documentation of good faith efforts may be reason for disqualification of the Bid / Proposal.

Bidders good faith efforts will include the following actions.

Soliciting through all reasonable and available means the interest of all certified DBE's who have the capability to perform work under the contract. This shall include attendance at pre-bid meetings, advertising and /or written notices. the bidder shall allow sufficient time to allow the DBE's to respond to the solicitation.

Selecting portions of the work to be performed by DBE's.

Providing interested DBE's with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

Negotiations in good faith with interested DBE's. It will be the responsibility of the bidder to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or materials consistent with the available DBE's. Evidence of negotiations shall include the names, addresses, and telephone numbers of DBE's that were considered and a description of the information provided regarding the plans and specifications for the work selected for subcontractors, and evidence as to why additional agreements could not be reached for DBE's to perform the work.

Not rejecting DBE's as being unqualified without sound reasons based on a thorough investigation of their capabilities.

Efforts to assist interested DBE's in obtaining bonding, lines of credit, or insurance as required.

Efforts to assist interested DBE's in obtaining necessary equipment, supplies, materials, or related assistance or services.

Use of services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

The prime contractor agrees not to terminate for convenience a DBE subcontractor, and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without ITP's prior written consent. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor agrees to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated.

28) DEBARMENT AND SUSPENSION

Bidders shall complete and submit as part of their bid, the Certification of Primary Contractor Regarding Debarment, Suspension, And Other Responsibility Matters for all projects when the total aggregate value of the contract exceeds \$25, 000. The bidder shall also submit a list of subcontracts and subcontractors which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project. A Certification Of Lower-Tier Participants Regarding Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions shall be submitted by the bidder to ITP for each listed subcontractor prior to contract award.

During the term of the Contract the successful bidder will be required to immediately notify ITP of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

29) LOBBYING CERTIFICATION

Bidders shall complete and submit as part of their bid the Certification of Restrictions on Lobbying for all projects when the total aggregate value of the contract exceeds \$100,000. The Contractor shall also submit a list of subcontracts and subcontractors which will exceed \$100,000. A Certification of Restrictions on Lobbying shall be submitted by the bidder to ITP for each listed subcontractor prior to contract award.

30) PRODUCT DESCRIPTION

Bids or proposals must be accompanied by a comprehensive description of bidder's product. This description shall include drawings, overall dimensions and photographs which show the construction characteristics and explain the operation of the bidder's product. The descriptive literature shall also include information on design details, components, performance characteristics, methods of manufacture and assembly. The descriptive literature is required for the purpose of evaluation and award. Failure of the descriptive literature to show that the product proposed conforms to the specifications and other requirements of this solicitation may result in rejection of the bid or proposal. Additionally, failure to submit the descriptive literature will require rejection of the bid or proposal. The quality of standard components not covered by the language of these specifications will be a factor in determining an award. No advantage shall be taken by the bidder or manufacturer in the omission of any part or detail which goes to make the product complete and ready for service, even though such part is not mentioned in this specification. All units or parts not specified shall be Contractor's standard units or parts and shall conform in materials, design and workmanship to the best practices known in the industry. All parts will be new and in no case will used, reconditioned, or obsolete parts be accepted without prior review and written acceptance by ITP.

31) DEMONSTRATION

Bidder may be requested to demonstrate to ITP the capability of their proposed product to perform and function as herein called for by this specification. The demonstration shall be at no expense to ITP in compliance with provisions outlined in the technical specifications contained herein.

32) PAYMENT TERMS (NOT APPLICABLE)

ITP will make payment in accordance with the following payment schedule, unless specified elsewhere.

50% within 30 days of delivery

20% within 30 days of installation

30% within 30 days after acceptance

The Contractor shall submit invoices to ITP prior to or upon delivery. Payment will not be made without an invoice. Partial payments do not constitute acceptance.

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SECTION 7: CONTRACT PROVISIONS

1) DURATION OF CONTRACT

This Contract shall become effective on _February 1, 2019 and shall remain in effect through January 31, 2024. This Contract may be extended for up to five additional one year extensions with the concurrence of both parties.

2) PROJECT STARTUP

The Contractor agrees to commence work on this Project immediately upon the signing of this Contract by both parties and the issuance of a Notice to Proceed by ITP

3) PROJECT COMPLETION (ITP Board)

This Project shall be completed **_not applicable_** days after execution of this Contract by both parties and issuance of a Notice to Proceed by ITP.

4) PROJECT COMPLETION (Notice to Proceed)

This Project shall be completed **_N. A._** days after Contract award by the ITP Board.

5) CONTRACT AMOUNT AND PAYMENT (Lump Sum)

ITP agrees to pay and the Contractor agrees to accept as payment in full the amount **of \$ _N.A._**.

6) CONTRACT AMOUNT AND PAYMENT (Payment in Full)

ITP agrees to pay and the Contractor agrees to accept as payment in full the amounts shown in Exhibit **_N.A._**, Payment Schedule.

7) CONTRACT AMOUNT AND PAYMENT (Payment Schedule)

ITP agrees to make payments for this Project in accordance with the Payment Schedule included as Exhibit N.A.. The Contractor agrees to accept these amounts as payment in full.

8) PAYMENT DOES NOT IMPLY ACCEPTANCE OF WORK

The granting of any progress payment or payments by ITP, or the receipt thereof by the Contractor, shall not constitute in any sense acceptance of the work of any portion thereof, and shall in no way lessen the ability of the Contractor to replace unsatisfactory work or material, though the unsatisfactory character of such work or material may not have been apparent or detected at the time such payment was made. Material, components or workmanship which does not conform to the instruction of these Contract requirements and specifications, or are not equal the samples submitted to and approved by ITP will be rejected and shall be replaced by the Contractor without delay.

**9) LIQUIDATED DAMAGES
(NOT APPLICABLE)**

In the event of delay in the completion of deliveries of _____
beyond the dates specified in the Contract
(Description of item or product)

And not subject to the Contract's Unavoidable Delay provision, ITP shall assess, as liquidated damages, \$100.00 per calendar day. These damages shall be deducted from any monies due, or which may thereafter become due to the Contractor under this Contract. Further, the Contractor agrees that sums assessed as liquidated damages shall not be considered penalties but reflect the cost to ITP for _____.
(state basis for determining damages)

10) AGREEMENT CHANGES

Additions, deletions or modifications to this Agreement may be made only in accordance with a written agreement between the parties, signed on behalf of ITP by its Executive Director or the Project Manager.

11) DISPUTES

Except as otherwise provided in the Contract, any dispute concerning a question of fact arising under the Contract which is not disposed of by agreement shall be decided by the ITP Project Manager who shall reduce his/her decision to writing and mail or otherwise furnish a copy thereof to the Contractor. The decision of the ITP Project Manager shall be final, unless determined by a court of competent jurisdiction to have been fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute thereunder, the Contractor shall proceed diligently with the performance of the Contract and in accordance with ITP Project Manager's decision.

This clause does not preclude consideration of law questions in connection with decisions provided for in this clause, provided that nothing in this Contract shall be construed as making final the decision of any administrative official, representative or board on a question of law.

11) PATENT, TRADEMARK, COPYRIGHT, AND TRADE SECRET INFRINGEMENT

The Contractor warrants that the goods and services do not infringe on any patent, trademark, copyright or trade secret of any third parties and agrees to defend, indemnify and hold ITP, its officers, agents, employees, trustees and its successors and assigns, harmless from and against any and all liabilities, loss, damage or expense, including, without limitation, court costs and reasonable attorneys' fees, arising out of any infringement or claims of infringement of any patent, trade name, trademark, copyright or trade secret by reason of the sale or use of any goods or services purchased under this Contract. ITP shall promptly notify the Contractor of any such claim. ITP makes no warranty that the production, sale or use of goods or services under this Contract will not give rise to any such claim and ITP shall not be liable to the Contractor for any such claim brought against the Contractor.

12) INDEMNIFICATION

The Contractor agrees to indemnify and hold ITP, its officers, agents, employees and/or trustees, harmless from and against any and all claims or causes of action brought against ITP and from any and all damages, losses, expenses,

attorneys' fees, costs and liabilities sustained by ITP arising out of any claimed defect in the goods or services supplied by the Contractor, any claimed improper manufacture, design, design drawings, specifications, materials or repairs provided by the Contractor pursuant to the Contract, and any claim by a third party for patent, trademark, copyright, or trade secret infringement. The Contractor's obligation under this paragraph shall include the obligation to indemnify and hold ITP harmless for its own negligence whether active, passive or concurrent, in the performance of ITP's duties and obligations pursuant to the Contract.

13) PATENT RIGHTS

If any invention, improvement, or discovery of the Contractor is conceived or first actually reduced to practice in the course of or under this Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Contractor shall notify ITP immediately and provide a detailed report. The rights and responsibilities of ITP, the Contractor, and FTA with respect to such invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, policies, and any waiver thereof.

14) RIGHTS IN DATA

The Contractor agrees to comply with the following provisions:

(a) The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under this Agreement. The term includes graphic or pictorial delineations in media such as drawings or photographs; text in specifications or related performance or design-type documents; machine forms such as punched cards, magnetic tape, or computer memory printouts; and information retained in computer memory. Examples include, but are not limited to: computer software, engineering drawings and associated lists, specifications, standards, process sheets, manuals, technical reports, catalog item identifications, and related information. The term does not include financial reports, cost analyses, and similar information incidental to Project administration.

(b) The following restrictions apply to all subject data first produced in the performance of this Agreement:

(1) Except for its own internal use, ITP may not publish or reproduce subject data in whole or in part, or in any manner or form, nor may ITP authorize others to do so, without the written consent of the Government, until such time as the Government may have either released or approved the release of such data to

the public; this restriction on publication, however, does not apply to Agreements with academic institutions.

(2) As authorized by 49 CFR Part 18.34, the Government reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use, and to authorize others to use, for Federal Government purposes:

a) Any subject data developed under a grant, cooperative agreement, sub-grant, sub-agreement, or third party contract, irrespective of whether or not a copyright has been obtained; and

b) Any rights of copyright to which ITP, sub-recipient, or a third party contractor purchases ownership with Federal assistance.

c) When FTA provides assistance to ITP for a project involving planning, research, development, or a demonstration, it is FTA's intent to increase the body of mass transportation knowledge, rather than to limit the benefits of the Project to those parties that have participated therein. Therefore, unless FTA determines otherwise, the recipient of FTA assistance to support planning, research, development, or a demonstration financed under the Federal Transit Act as amended, understands and agrees that, in addition to the rights set forth in paragraph (b)(2) of this Agreement, FTA may make available to any FTA recipient, sub-recipient, third party contractor, or third party subcontractor, either FTA's license in the copyright to the subject data derived under this Agreement or a copy of the subject data first produced under this Agreement. In the event that the Project, which is the subject of this Agreement, is not completed for any reason whatsoever, all data developed under that Project shall become subject data as defined in paragraph (a) of this Agreement and shall be delivered as the Government may direct. Paragraph (a) of the Agreement, however, does not apply to adaptations of automatic data processing equipment or programs for ITP's use which costs are financed with capital funds (Sections 3, 9, 16, 18, or 25 of the Federal Transit Act, as amended, or Title 23 capital funds).

d) Unless prohibited by State law, ITP agrees to indemnify, save and hold harmless the Government, its officers, agents, and employees acting within the scope of their official duties against any liability, including costs and expenses, resulting from any willful or intentional violation by ITP of proprietary rights, copyrights, or right of privacy, arising out of the publication, translation, reproduction, delivery, use or disposition of any data furnished under this Agreement. ITP shall not be required to indemnify the Government for any such liability arising out of the wrongful acts of employees or agents of the Government.

e) Nothing contained in this section shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government under any patent.

Paragraphs (2)b), (2)c), and (2)d) of this Agreement do not apply to material furnished to ITP by the Government and incorporated in the work carried out

under the Agreement; provided that such incorporated material is identified by ITP at the time of delivery of such work.

15) COVENANT AGAINST GRATUITIES

The Contractor warrants that he or she has not offered or given gratuities (in the form of entertainment, gifts, or otherwise) to any official or employee of ITP with a view toward securing favorable treatment in the awarding, amending, or evaluating performance of Contract.

16) ASSIGNABILITY

The terms and provisions of the Contract documents shall be binding upon ITP and the Contractor and their respective partners, successors, heirs, executors, administrators, assigns and legal representatives. The rights and obligations of the Contractor under the Contract may not be transferred, assigned, sublet, mortgaged, pledged or otherwise disposed of or encumbered in any way without ITP's prior written consent. The Contractor may subcontract a portion of its obligations to other firms or parties but only after having first obtained the written approval by ITP of the subcontractor.

ITP may assign its rights and obligations under the Contract to any successor to the rights and functions of ITP or to any governmental agency to the extent required by applicable laws or governmental regulations or to the extent ITP deems necessary or advisable under the circumstances.

17) PRICE WARRANTY AND COMMISSIONS

The price to be paid by ITP shall be that stated in this Contract which the Contractor warrants to be no higher than the Contractor's current prices on orders by others for goods similar to those covered by this Contract for similar quantities under similar conditions and methods of purchase. In the event the Contractor breaches this warranty, the prices of the items shall be reduced to the Contractor's current prices on orders by others, or in the alternative at ITP's sole discretion, ITP may cancel this Contract without liability to the Contractor for breach. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this Contract upon an agreement or understanding for commission, percentage, brokerage or contingent fee excepting bona fide employees of bona fide established commercial or selling agencies maintained by the seller for the purpose of securing business. For

breach or violation of this warranty, ITP shall have the right in addition to any other rights, to cancel this Contract without liability and to deduct from the Contract price or otherwise recover from the Contractor the full amount of such commission, percentage, brokerage or contingent fee.

18) RECORD RETENTION

During the course of the Project and for three (3) years thereafter, the Contractor agrees to retain intact and to provide any data, documents, reports, records, contracts, and supporting materials relating to the Project as the Government may require. Reporting and record keeping requirements for governmental recipients are set forth in 49 CFR Part 18. Reporting and record keeping requirements for private nonprofit and for-profit recipients, are set forth in OMB Circular A-110. Project close out does not alter these requirements.

19) CONTRACTOR'S LIABILITY INSURANCE

The Contractor shall maintain Professional Liability Insurance and Errors and Omissions Insurance in the amount of \$5,000,000 per claim and \$5,000,000 in the aggregate. In addition, the ITP is recommending one (1) million dollars of insurance in force for auto and general liability along with a five (5) million dollar umbrella.

20) UNAVOIDABLE DELAYS

If delivery of completed Project under this Contract should be unavoidably delayed, the ITP Project Manager will extend the time for completion of the Contract for the determined number of days of excusable delay. A delay is unavoidable only if the delay was not reasonable expected to occur in connection with or during the Contractor's performance; was not caused directly or substantially by acts, omissions, negligence or mistakes of the Contractor, the Contractor's suppliers or their agents; was substantial and in fact caused the Contractor to miss delivery dates and could not adequately have been guarded against by contractual or legal means.

21) NOTIFICATION OF DELAY

The Contractor will notify the Project Manager as soon as the Contractor has, or should have, knowledge that an event has occurred which will delay completion of this Project. Within five (5) working days, the Contractor will confirm such notice in writing, furnishing as much detail as is available.

22) REQUEST FOR EXTENSION

The Contractor agrees to supply, as soon as such data are available, any reasonable proofs that are required by the ITP Project Manager to make a decision on any request for extension. The ITP Project Manager will examine the request and any documents supplied by the Contractor and will determine if the Contractor is entitled to an extension and the duration of such extension. The ITP Project Manager will notify the Contractor of the decision in writing. It is expressly understood and agreed that the Contractor will not be entitled to damages or compensation, and will not be reimbursed for losses on account of delays resulting from any cause under this provision.

23) CONTRACTOR'S REPRESENTATIVE

Prior to the start of Contract performance, the Contractor shall advise ITP in writing of the primary and alternate representatives (including phone numbers) who will have management responsibility for the total Contract effort to receive and act on technical matters and resolve problems of a contractual nature.

24) INTERURBAN TRANSIT PARTNERSHIP'S REPRESENTATIVES

Prior to the start of Contract performance, the ITP Project Manager will furnish a letter to the Contractor indicating the personnel who will represent ITP in the administration of this Contract to insure successful performance. Such letter shall include the specific duties of each individual and their limits of authority.

25) INSTRUCTIONS BY UNAUTHORIZED THIRD PERSONS

In accordance with the Contract Changes provision of the Contract, The ITP Project Manager or his/her authorized representative are the only persons authorized to make changes within the general scope of the Contract.

Any instructions, written or oral, given to the Contractor by someone other than the ITP Project Manager or his/her authorized representative, which are considered to be a change in the Contract, will not be considered as an authorized Contract Change. Any action on the part of the Contractor taken in compliance with such instructions will not be grounds for subsequent payment or other consideration in compliance with the unauthorized change.

26) TERMINATION OF AGREEMENT

This agreement may be terminated for reasons of convenience or default.

a) Termination For Convenience: ITP may terminate this Agreement, in whole or in part, at any time by written notice to the Contractor. The Contractor shall be paid its costs, including Contract closeout costs and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to be paid the Contractor. If the Contractor has any property in its possession belonging to or paid for by ITP, the Contractor will account for same, and dispose of it in the manner ITP directs.

b) Termination For Default: If the Contractor does not deliver the complete Project in accordance with this Agreement or if the Contractor fails to comply with any other provisions of the Agreement, ITP may terminate, revoke or rescind this Agreement for default. Termination, revocation or rescission shall be effected by serving notice on the Contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the Contract price for the portions of the Project furnished, accepted, and found in compliance with the terms and conditions of this Agreement.

If it is later determined by ITP that the Contractor has an excusable reason for not performing, such as a strike, fire or flood, events which are not the fault of, or are beyond the control of the Contractor, ITP, after setting up a new delivery or performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

Termination, revocation or rescission of this Agreement for default shall not affect or impair any rights or claims of ITP to damages for breach of any covenants of this Agreement by the Contractor. Further, should the Contractor fail to comply with the conditions of the Agreement or fail to complete the specified work or furnish the specified services as stipulated in the Agreement, ITP reserves the right to purchase on the open market, or to complete the required work at the expense of the Contractor and to pursue all other recoveries available to ITP under Michigan law.

In the event of a dispute under this Agreement, ITP and the Contractor agree that proper venue for purposes of litigation shall be Kent County, Michigan.

27) INTEREST OF MEMBERS OF OR DELEGATES TO CONGRESS

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this Contract or to receive any benefit therefrom.

28) DBE PARTICIPATION

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as ITP deems appropriate.

A minimum of 0 percent of the total contract price, as awarded, shall be awarded to certified DBE's by the Contractor.

29) DEBARMENT AND SUSPENSION

The Contractor agrees to comply with U. S. Department of Transportation regulations, "Government Debarment and Suspension (Nonprocurement)", 49 CFR Part 29, and otherwise comply with the requirements of those regulations. This includes the requirement of the bidder to submit the Certification Of Primary Contractor Regarding Debarment, Suspension, And Other Responsibility Matter for all projects when the total aggregate value of the Contract exceeds \$25,000 and to submit a Certification Of Lower Tier Participation Regarding Debarment, Suspension, And Other Ineligibility And Voluntary Exclusions for each subcontractor which will have a financial interest in this Project which exceeds \$25,000 or will have a critical influence on or a substantive control over the Project.

During the term of the Contract the Contractor agrees to immediately notify ITP of 1) any potential subcontractor that is subject to this provision and to submit the appropriate certification prior to award of a subcontract, 2) any information that its certification or certification of its subcontractors was erroneous when submitted, 3) any information that certifications have become erroneous by reason of changed circumstances.

The Contractor shall submit with each request for payment a list of all subcontractors to this contract which have a financial interest in this Project which exceeds \$25,000 or have had a critical influence on or substantive control

over the Project and submit evidence that the appropriate certificate has been submitted and that they remain valid.

ITP will not make payment to the Contractor or a subcontractor which 1) does not comply with this contract provisions, or, 2) is not in compliance with the above-cited federal requirements.

30) ENVIRONMENTAL, RESOURCE CONSERVATION, AND ENERGY REQUIREMENTS

Environmental Protection. The Contractor agrees to comply with applicable requirements of the National Environmental Policy Act of 1969, as amended, 42 USC §§ 4321 et seq.; section 14 of the Federal Transit Act, as amended, 49 USC app. §§ 1610; Council on Environmental Quality regulations, 40 CFR Part 1500 et seq.; and joint FHWA/FTA regulations, "Environmental Impact And Related Procedures" at 23 CFR Part 771 and 49 CFR Part 622. Air Quality. The Contractor agrees to comply with applicable requirements of EPA regulations, "Conformity To State Or Federal Implementation Plans Of Transportation Plan, Programs, And Project Developed, Funded Or Approved Under Title 23 USC Or The Federal Transit Act", 40 CFR Part 51, Subpart T; and "Determining Conformity Of Federal Actions To State Or Federal Implementation Plans", 40 CFR Part 93. To support the requisite air quality conformity finding for the Project, the Contractor agrees to implement each air quality mitigation and control measure incorporated in the Project. The Contractor agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure, will be wholly consistent with the description of the design concept and scope of the Project set forth in the SIP. EPA also imposes requirements pertaining to the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Thus, the Contractor should be aware that the following EPA regulations, among others, may apply to its Project; "Control Of Air Pollution From Motor Vehicles And Motor Vehicle Engines", 40 CFR part 85; "Control Of Air Pollution From New And In-Use Motor Vehicles And New And In-Use Motor Vehicle Engines: Certification And Test Procedures", 40 CFR Part 86; and "Fuel Economy Of Motor Vehicles", 40 CFR Part 600. Use Of Public Lands. No publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from an historic site of national, State, or local significance may be used for the Project unless specific findings required by 49 USC § 303 are made by U.S. DOT. Historic Preservation. The Contractor agrees to assist the Government (FTA) to comply with section 106 of the National historic Preservation Act, 16 USC § 470f, involving historic and archaeological preservation by:

a) Consulting the State Historic Preservation Officer on the conduct of investigations, in accordance with Advisory Council on Historic Preservation

regulations, "Protection of Historic And Cultural Properties", 36 CFR Part 800, to identify properties and resources listed in or eligible for inclusion in the National Register Of Historic Places that may be affected by the Project, and notifying the Government (FTA) of the existence of any such properties; and,

b) Complying with all Federal requirements to avoid or mitigate adverse effects upon such properties.

Energy Conservation. The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in applicable State energy conservation plans issued in compliance with the Energy Policy And Conservation Act, 42 USC §§ 6321 et seq.

Mitigation of Adverse Environmental Effects. Should the proposed Project cause adverse environmental effects, the Contractor agrees to take all reasonable steps to minimize such effects pursuant to 49 USC app. § 1610, all other applicable statutes, and the procedures set forth in 23 CFR Part 771 and 49 CFR Part 622. The Contractor agrees to undertake all environmental mitigation measures that may be identified as commitments in applicable environmental documents (such as environmental assessments, environmental impact statements, memoranda of agreement, and statements required by 49 USC § 303) and with any conditions imposed by the Government as part of a finding of no significant impact or a record of decision; all such mitigation measures are incorporated in and made part of this Agreement by reference. As soon as the Government and the Contractor reach agreement on any mitigation measures that have been deferred, those measures will then be incorporated into this Agreement. Such mitigation measures may not be modified or withdrawn without the express written approval of the Government.

31) LABOR PROVISIONS: NON-CONSTRUCTION CONTRACTS

Pursuant to regulations set forth in 29 CFR, Part 5, the Contractor agrees to comply with applicable labor provisions for non-construction contracts. Requirements for compliance are as follows.

- a) Overtime Requirements: No Contractor or subcontractor contracting for any part of the Contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any work week in which he or she is employed on such work to work in excess of forty (40) hours in such work week unless such laborer or mechanic receives compensation at a rate not

less than one and one-half (1 1/2) times the basic rate of pay for all hours worked in excess of forty (40) hours in such work week.

- b) Violation; Liability For Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in Subparagraph (b)(1), 29 CFR, Section 5.5, the Contractor and any subcontractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a Territory, to such District or such Territory) for liquidated damages. Such liquidated damages shall be computed with respect to each employed in violation of the clause set forth in Subparagraph (b)(1) of 29 CFR, Section 5.5, in the sum of \$10 for each calendar day in which such individual was required or permitted to work in excess of the standard work week of forty (40) hours without payment of the overtime wages required by the clause set forth in Subparagraph (b)(1) of 29 CFR, Section 5.5.

- c) Withholding For Unpaid Wages And Liquidated Damages: FTA or ITP shall, upon its own action or upon written request of an authorized representative of the Department of Labor withhold, or cause to be withheld from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime Contractor, or any other Federally assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Contractor, such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in Subparagraph (b)(2) of 29 CFR, Section 5.5.

- d) Subcontracts: The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in Subparagraph (a) through (d) of this provision and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in Subparagraphs (a) through (d) of this paragraph. on-Construction Contracts: The requirements clauses contained in 29 CFR, Section 5.5 (b) or paragraphs (a) through (d), are applicable to any contract subject to the overtime provisions of the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 CFR, Section 5.1. The Contractor or subcontractor shall maintain payrolls and basic payroll records during

the course of the work and shall preserve them for a period of three (3) years from the completion of the Contract for all laborers and mechanics, including guards and watchmen, working on the Contract. Such records shall contain the name and address of each such employee, Social Security Number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. The records to be maintained under this paragraph shall be made available by the Contractor or subcontractor for inspection, copying or transcription by authorized representatives of FTA, DOT, or the Department of Labor, and the Contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

32) TITLE VI COMPLIANCE OF THE CIVIL RIGHTS ACT OF 1964

The Contractor agrees to comply with, and assure the compliance by its subcontractors under this Project, with all requirements of Title VI of the Civil Rights Act of 1964, 42 USC § 2000d; U.S. DOT regulations, "Nondiscrimination In Federally-Assisted Programs Of The Department Of Transportation -- Effectuation Of Title VI Of The Civil Rights Act", 49 CFR Part 21.

33) COMPLIANCE WITH LAWS AND REGULATIONS

The Contractor warrants that it is and will remain in compliance with all federal, state, and local laws, regulations, and ordinances relating to the manufacture, sales, and delivery of the goods and services sold to ITP in connection with this Contract.

34) NOTICE OF FEDERAL REQUIREMENTS

The Contractor understands that Federal laws, regulations, policies, and related administrative practices applicable to this Agreement on the date an Agreement was executed may be modified from time to time. The Contractor agrees that the changed requirements will apply to the Project as required. All standards or limits set forth in this Agreement to be observed in the performance of the Project are minimum requirements.

35) PROHIBITED INTEREST

No ITP employee, officer, or agent, including any member of an evaluation committee for a ITP project, may participate in the selection, award, or administration of a ITP contract if a real or apparent conflict of interest would exist. Such a conflict would exist when any of the parties set forth below has a material financial or other interest in a firm selected for award:

Any employee, officer, or agent of ITP; any member of his/her immediate family; his/her partner; or an organization employing or about to employ any of the above.

Any interest as owner or stockholder of one percent (1%) or less in such a firm shall not be deemed to be a material financial interest, but serving as Director, officer, consultant, or employee of such an organization would be deemed a material interest.

36) AUDIT AND INSPECTION

For contract awards not based on competitive bidding procedures as defined by the Secretary Of Transportation, the Contractor agrees to permit the Secretary Of Transportation and the Comptroller General of the United States, or their duly authorized representative, to inspect all work, materials, payrolls, and other data and records involving that contract, and to audit the books, records, and accounts involving that contract as it affects the Project.

37) EQUAL EMPLOYMENT OPPORTUNITY

In implementing the Project, the Contractor may not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor shall insert the foregoing provision (modified only to show the particular contractual relationship) in all its third party contracts for Project implementation, except contracts for standard commercial supplies or raw materials and construction contracts, and shall require all such contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials.

38) LOBBYING CERTIFICATION

During the term of this Contract the Contractor agrees to comply with the provisions of 31 USC section 1352, which prohibit the use of Federal funds for lobbying by any official or employee of any Federal agency, or member of employee of Congress; and requires the Contractor to disclose any lobbying of any official or employee of any Federal agency, or member or employee of Congress in connection with Federal assistance. The Contractor agrees to comply with U.S. DOT regulations, "New Restrictions On Lobbying", 49 CFR Part 20 and include these requirements in any subcontract which exceeds \$100,000. The Contractor and all subcontractors in receipt of contracts exceeding \$100,000 shall submit Standard Form LLL quarterly to ITP. The Contractor shall also submit with each request for payment 1) a list of each contractor and subcontractor that is subject to the Lobbying Certification, 2) certifications or evidence of certification for all subcontractors, 3) information regarding material changes in the previous certifications or disclosures, and, 4) Standard Form LLL or evidence that the form was previously submitted to ITP.

ITP will not make any payment to the Contractor or a subcontractor which 1) does not comply with this contract provisions, or, 2) is not in compliance with the above-cited federal requirements.

39) AMERICANS WITH DISABILITIES ACT

The Contractor agrees to and assures that any subcontractor under this Project complies with all applicable requirements of the Americans With Disabilities Act of 1990 (ADA), 42 USC § 12101 et seq.; section 504 of the Rehabilitation Act of 1973, as amended, 29 USC § 794; section 16 of the Federal Transit Act, as amended, 40 USC app. § 1612; and the following regulations and any amendments thereto:

U.S. Dot regulations, "Transportation Services For Individuals With Disabilities (ADA)", 49 CFR Part 37;

U.S. Dot regulations, "Nondiscrimination On The Basis Of Handicap In Programs And Activities Receiving Or Benefiting From Federal Financial Assistance", 49 CFR Part 27;

U.S. DOT regulations, "Americans With Disabilities (ADA) Accessibility Specifications For Transportation Vehicles", 49 CFR Part 38;

Department Of Justice (DOJ) regulations, "Nondiscrimination On The Basis Of Disability In State And Local Government Services", 28 CFR Part 35;

DOJ regulations, "Nondiscrimination On The Basis Of Disability By Public Accommodations And In Commercial Facilities", 28 CFR Part 36;
General Services Administration regulations, "Accommodations For The Physically Handicapped", 41 CFR Subpart 101-19;
Equal Employment Opportunity Commission, "Regulations to Implement The Equal Employment Provisions Of The Americans With Disabilities Act", 29 CFR Part 1630;
Federal Communications Commission regulations, "Telecommunications Relay Services And Related Customer Premises Equipment For The Hearing And Speech Disabled", 47 CFR Part 64, Subpart f; and,
FTA regulations, "Transportation For Elderly And Handicapped Persons", 49 CFR Part 609.

40) PRIVACY

The Contractor agrees:

- a) To comply with the Privacy Act of 1974, 5 USC § 552a, and regulations thereunder, when performance under the Project involves the design, development, or operation of any system of records on individuals to be operated by the Recipient, its third party contractors, subrecipients, or their employees to accomplish a Government function;
- b) To notify the Government when the Contractor, subcontractor, or their employees anticipate operating a system of records on behalf of the Government in order to implement the Project, if such system contains information about individuals retrievable by the individual's name or other identifier assigned to the individual. A system of records subject to the Act may not be used in carrying out this Project until the necessary and applicable approval and publication requirements have been met. The Contractor, subcontractor, and their employees agree to correct, maintain, disseminate, and use such records as required by the Act, and to comply with all applicable terms of the Act;
- c) To include in every solicitation and in every third party contract and sub-agreement when the performance of work under that proposed third party contract or sub-agreement may involve the design, development, or operation of a system of records on individuals to be operated under that third party contract or sub-agreement to accomplish a Government function, a Privacy Act notification informing the third party contractor, or subrecipient that it will be required to design, develop, or operate a system of records on individuals to accomplish a Government function subject to the Privacy Act of 1974, 5 USC § 552a, and Federal agency regulations, and that a violation of the Act may involve the imposition of criminal penalties.

41) REMEDIES / BREACH OF CONTRACT

If the Contractor breaches any provision in this Contract, the Contractor agrees to reimburse ITP for all damages suffered, including but not limited to incidental, consequential and other damages, as well as lost profits. The remedies in this Contract shall be cumulative and in addition to any other remedies allowed to ITP under applicable law. No waiver by ITP of any breach or remedy shall be a waiver of any other breach or remedy.

42) DBE SUBCONTRACTOR'S PAYMENT & REPORTING REQUIREMENTS

A) Prompt Payment

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from ITP. The prime contractor agrees further to return retainage payments to each subcontractor within 10 days after subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of ITP. This clause applies to both DBE and non-DBE subcontractors.

B) Contractor Reporting Requirements

The prime contractor agrees to count only the value of the work actually performed by the DBE firm toward its overall DBE goal. When a DBE performs as a participant in a joint venture, the prime contractor agrees to count the portion of the work of the contract that the DBE performs with its own forces toward its DBE goal only if the DBE is performing a commercially useful function of the contract. The factors listed in 49 CFR Part 26 will be used to determine whether a DBE trucking firm is performing a commercially useful function. The prime contractor understands that expenditures with DBEs for materials or supplies toward DBE goals will be counted according to the factors listed in 49 CFR Part 26. The prime contractor agrees to meet with the ITP DBE Liaison Officer for the purpose of verifying contractor reporting requirements prior to the signing of a contract.

C) Legal and Contract Remedies

The prime contractor agrees to report quarterly to the ITP DBE Liaison Officer on all payments made to DBE subcontractors. Further, the contractor shall provide all copies of canceled checks made to DBE subcontractors showing proof of actual payment. The prime contractor understands that failure to report

quarterly to the ITP DBE Liaison Officer may result in the termination of this contract or such other remedy as ITP deems appropriate.

The prime contractor understands that ITP will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT inspector General, action under suspension and debarment of Program Fraud or Civil Penalties rules) provided in 26.109. The prime contractor understands that ITP will consider similar action under their own legal authorities, including responsibility determinations in future contracts.

43) OSHA REQUIREMENTS

The Contractor expressly warrants that all materials, supplies, and equipment provided under this Contract are provided in full compliance with the Occupational Safety and Health Act of 1970, as amended, and all standards, rules, regulations and orders issued pursuant thereto, and all other federal and state safety and health statutes. All sales of hazardous materials as defined in Title 29 of the cost of Federal Regulation, Chapter VII, parts 1501-1503, shall be accompanied by a completed U.S. Department of Labor "Materials Safety Data Sheet", Form OHFA-20 by the Contractor for each good sold to ITP.

44) CARGO PREFERENCE

Pursuant to 46 CFR, Part 381, the Contractor agrees:

a) To utilize privately owned United States flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, materials or commodities pursuant to 46 CFR, Part 381, to the extent such vessels are available at fair and reasonable rates for United States flag commercial vessels.

To furnish within twenty (20) days following the date of loading for shipments originating within the United States, or within thirty (30) working days following the date of loading for shipment originating outside the United States, a legible copy of a rated, "on-board" commercial ocean Bill-Of-Lading in English for each shipment of cargo described in paragraph (a) above to ITP (through the prime Contractor in the case of subcontractor Bills-Of-Lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, 400 Seventh Street SW, Washington, DC, 20590, marked with appropriate identification of the Project.

To insert the substance of the provisions of this clause in all subcontracts issued pursuant to this Contract.

45) BUY AMERICA

The Contractor agrees to comply with Section 165 of the Surface Transportation Assistance Act of 1982, as amended, "Buy America Requirements - Surface Transportation Assistance Act Of 1982", 49 CFR Part 661, and 49 CFR, Part 663, and any amendments thereto and any implementing guidance issued by FTA.

46) CHANGE ORDERS

ITP's Project Manager, at any time by written order and without notice to the sureties, may make changes within the general scope of this Contract in (i) drawings, designs or specifications where the supplies to be furnished are to be specially manufactured for ITP in accordance therewith; (ii) method of shipment of packing; (iii) place of delivery. If any such change causes an increase or decrease in the cost of or the time required for performance of this Contract, whether changed or not changed by such order, an equitable adjustment shall be made by written modifications of the Contract. Any claim by the Contractor for adjustment under this clause must be asserted within thirty (30) days from the date of receipt by the Contractor of the notification of change; provided that ITP's Project Manager, if he decides that the facts justify the action, may receive and act upon any such claim. Nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

47) PRODUCT WARRANTY

The Contractor expressly warrants that the goods provided under this Contract shall conform to all specifications, drawings, and other descriptions of the goods made by the Contractor or contained in specifications furnished to the Contractor by ITP, and shall be free from all defects in material, design and workmanship. The Contractor also expressly warrants that the goods are merchantable and fit for the particular purpose intended by ITP. The warranties of the Contractor contained in this Contract extend to future performance of the goods sold under this Contract. The Contractor further agrees not to

attempt to limit or to exclude any remedies for damages, whether incidental, consequential or otherwise.

48) WARRANTY AND GUARANTEE

The Contractor hereby warrants to ITP that all of the equipment furnished under the procurement shall be free from defects in material and workmanship under normal operating use and service. The Contractor shall provide such a Warranty beginning at the time of final acceptance of the system and continuing for a period of one (1) year on all equipment. The Warranty shall cover all parts and labor costs during the Warranty period. The remedial work to correct any of the potential deficiencies shall include the repair or replacement, at the Contractor's option, of equipment, components, devices and/or material. It is expressly understood that this Warranty covers all parts and labor costs necessary and that all cost for the necessary labor and material during the Warranty period shall be borne by the Contractor and not by ITP except as provided for herein.

The Contractor also agrees to provide all labor and material to replace, during the period of this Warranty, without expense to ITP, any and all parts which may be damaged due to defects in, or failure of such parts or of any other part or parts of the equipment furnished under the procurement. ITP shall maintain the equipment in accordance with the Contractor's instructions in order to maintain this Warranty, and the Contractor shall be responsible for all shipping charges.

Contractor shall be solely responsible for all materials and workmanship, including all specialties and accessories, whether manufactured by it or others, used in the equipment and for adequate installation and connection of all equipment, accessories, specialties and components. Under no conditions shall Contractor delegate this responsibility to suppliers or other sources.

Any apparatus, device or material which, in the sole opinion of ITP, requires excessive service during its operation, shall be brought to the attention of the Contractor by ITP at the conclusion of the first year but prior to the expiration of the Warranty. The Contractor shall be required to repair or replace the apparatus, device or material (at his or her determination of the problem and its cause) at no expense to ITP. Should a "class failure" be involved, the Contractor may be required by ITP to extend the Warranty on that item until the requirement for excessive service is eliminated. Excessive service is defined as three (3) failures (an event or failure of a given device and/or component in a unit or units which renders the unit or units inoperative and/or unsuitable for the intended purpose) or malfunctions (an event or failure of a given device and/or component in a unit or units which causes a degraded performance of the equipment, but does not render the equipment inoperative) during the Warranty period. A "class failure" is a failure of a given component and/or

device in five percent (5%) of the equipment provided during the Warranty period. The determination of a "class failure" shall be by ITP and shall assume that all equipment within its respective category has these defects and shall ultimately experience these same failures.

In the event the Contractor fails to comply within ten (10) working days to a request by ITP to repair, replace or correct damaged or defective work, materials, specialties, equipment and accessories, ITP shall, upon written notice to the Contractor, have authority to deduct the cost of labor and material incurred by ITP itself in making such repairs from any compensation due or to become due the Contractor. In the event the Contractor has been paid, the Contractor agrees to reimburse ITP for the cost thereof. It is understood, however, that the said Warranty or Guarantee will not apply to any equipment which has been repaired or altered without the knowledge or consent of the Contractor and which repair or altering affected its stability and/or reliability; nor will said Warranty or Guarantee apply if the equipment has been subjected to other than normal use under conditions which prevail in ITP service. The burden of proof for any negligence on the part of ITP shall rest with the Contractor. Temperature, humidity, bus vibration and ambient electric conditions shall be considered normal operating conditions for this equipment. The Warranty shall not cover the replacement and maintenance items (such as light bulbs) made in connection with normal maintenance service.

Labor costs for ITP to diagnose and to exchange faulty components, subassemblies or equipment and the shipping costs to return such items to a service location nominated by the Contractor for repair or replacement as provided for herein shall be at the expense of the Contractor. The shipping costs, including packing and insurance, to ship repaired or replaced items to ITP shall be at the expense of the Contractor.

Contractor guarantees that a stock of replacement parts for the equipment and all components thereof, will be available for a period of not less the fifteen (15) years after the date of acceptance of the completed system under this Contract by ITP.

The above Warranties are in addition to any statutory implied Warranties or Remedies imposed on the Contractor.

49) INTERCHANGEABILITY

All units and components procured under this Contract, whether provided by suppliers or manufactured by the Contractor shall be duplicates in design, manufacture and installation to assure interchangeability among items in this procurement. This interchangeability shall extend to the individual components as well as to their locations in the unit.

50) TITLE

Title to goods acquired by ITP under this Contract shall pass to ITP when such goods are delivered, installed and accepted by ITP. The Contractor shall bear all risk of loss until passage of title, or adequate documents for securing title shall be provided to ITP by the Contractor.

51) INSPECTION

(a) ITP reserves the right and shall be at liberty to inspect all materials and workmanship at any time during the manufacturing or installation process; provided, however, it is under no duty to make such inspection, and no inspection so made shall relieve Contractor from any obligation to furnish materials and workmanship strictly in accordance with the instructions, Contract requirements and specifications.

Any work or material found to be in any way defective or unsatisfactory shall be corrected or replaced by the Contractor at its own expense at the order of ITP notwithstanding that it may have been previously overlooked or passed by an inspector. Inspection shall not relieve the Contractor of its obligations to furnish materials and workmanship in accordance with this Contract and its specifications.

52) PREAWARD/POSTDELIVERY AUDIT

The Contractor shall comply with any regulations that may be issued to implement section 12(j) of the Federal Transit Act, 49 USC app. § 1608(j), and Federal Regulation 49 CFR, Part 663.

53) BUS TESTING

The Contractor shall comply with the bus testing requirements as set forth in section 12(h) of the Federal Transit Act, 49 USC app. § 1608(h), and any implementing regulations that may be issued thereunder.

54) ASSUMPTION OF RISK OF LOSS

ITP shall assume risk of loss of the vehicle after delivery to its facility. Prior to this delivery or release, the Contractor shall have risk of loss of the vehicle, including any damages sustained during the common carrier drive-away operation. Drivers shall keep a maintenance log enroute and it shall be delivered to ITP with the vehicle.

REQUIRED FEDERAL CERTIFICATES

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INSTRUCTION FOR FILLING OUT THIS FORM ARE ON OTHER SIDE

DBE PARTICIPATION FORM

Separate information is required for each DBE subcontractor. This form may be duplicated as necessary.

1. DBE Firm Name _____
Address: _____

2. Dollar amount awarded _____
3. Description of work to be performed : _____

4. **CONTRACTOR'S COMMITMENT TO USE DBE FIRM**

_____ is committed to utilize the DBE
(Name of Contractor)

contractor to utilize the above named DBE subcontractor/supplier in the manner and amount described on this form.

Dated _____ (Authorized Signature)

5. **DBE'S COMMITMENT TO PARTICIPATE**

_____, as a DBE firm, is committed to
(Name of subcontractor/supplier)
perform the work as described above for the amount specified.

Dated _____ (Authorized Signature)

6. **NO SUBCONTRACT OPPORTUNITIES, AVAILABLE.**

_____, has no subcontractor opportunities
(Name of subcontractor/supplier)
available for work to be performed.

Dated _____ (Authorized Signature)

BLANK forms are NOT acceptable. If DBE subcontractor opportunities are available please fill out sections 1 thru 5. If no subcontractor opportunities available fill out section 6. SIGNATURES ARE REQUIRED.

DBE PARTICIPATION FORM

Separate information is required for each DBE subcontractor. This form may be duplicated as necessary.

1. DBE Firm Name: _____
Address: _____
Sub contractor name and address

2. Dollar amount awarded: _____
Amount awarded to Sub contractor

3. Description of work to be Performed: _____

4. **CONTRACTOR'S COMMITMENT TO USE DBE** **Prime contractor fills out.**
_____, is committed to utilize the DBE
(Name of Contractor)
contractor to utilize the above named DBE subcontractor/supplier in the manner and amount described on this form.
Dated _____ (Authorized Signature)

5. **DBE'S COMMITMENT TO PARTICIPATE** **Sub contractor fills out.**
_____, as a DBE firm, is committed to
(Name of subcontractor/supplier)
perform the work as described above for the amount specified.
Dated _____ (Authorized Signature)

6. **NO SUBCONTRACT OPPORTUNITIES, AVAILABLE.** **Prime contractor fills out.**
_____, has no subcontractor opportunities
(Name of subcontractor/supplier)
available for work to be performed.
Dated _____ (Authorized Signature)

**CERTIFICATION OF PRIMARY CONTRACTOR REGARDING DEBARMENT,
SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

The Primary Contractor, _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
2. Have not within a three (3) year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offense enumerated in paragraph (2) of this certification; and
4. Have not within a three (3) year period preceding this application/proposal had one (1) or more public transactions (Federal, State, or Local) terminated for cause or default.

If the above named Primary Contractor is unable to certify to any of the the statements in this certification, the Primary Contractor shall attach an explanation to this certification.

The Primary Contractor, _____, certifies or affirms the truthfulness and accuracy of the contents of the statements submitted on or with this certification and understands that the provision of 31 U.S.C. Section 3801 et seq. are applicable thereto.

Signature and Title of Authorized Official

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CERTIFICATION OF RESTRICTIONS ON LOBBYING

I, _____, _____, hereby certify on
(Name) **(Title)**

behalf of _____ that:
(Firm)

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance is placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty or not less than \$10,000 and not more than \$100,000 for each such failure.

Dated _____
(Name)
(Title)
(Firm)

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ATTACHMENT A
REQUIRED FORMS

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The following forms must be completed and submitted with Proposals. All forms are included in this solicitation package in Appendix A.

- A. Representations and Certifications
- B. Receipt of Addenda Form
- C. Non Collusion Affidavit
- D. Price

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REPRESENTATIONS

Proposers firm is as: (check or complete all applicable boxes)

- an individual
- a partnership
- a non-profit organization
- a corporation, incorporated under the laws of the State of _____
- a limited liability corporation (LLC)
- other, _____

15.2 CERTIFICATIONS

(check applicable box)

1. Covenants Against Gratuities:

Neither Proposer nor any of its employees, representatives or agents have offered or given gratuities or will offer or give gratuities (in the form of entertainment, gifts or otherwise) to any director, officer or employee of ITP with the view toward securing favorable treatment in the awarding, amending, or the making of any determination with respect to Proposer selection or the performance of the Contract.

The undersigned Proposer certifies that the foregoing is true.

Date

Proposer

Authorized Representative

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PROPOSAL ADDENDA

Addenda:

The undersigned acknowledges receipt of the following addenda to the document:

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Addendum No. _____, Dated _____

Failure to acknowledge receipt of all addenda may cause the bid to be considered non-responsive to the solicitation. Acknowledged receipt of each addendum must be clearly established and included with the offer.

The undersigned understands that any conditions stated above, clarifications made to above or information submitted on or with this form other than that requested, will render bid unresponsive.

(Name of Individual, Partnership or Corporation)

(Address)

(Authorized Signature)

(Title)

(Date)

(Telephone)

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CERTIFICATE OF NON COLLUSION

I hereby swear (or affirm) under penalty for perjury:

- 1. That I am the Proposer or an officer or employee of the proposing corporation having authority to sign on its behalf (if the Proposer is a corporation);
- 2. That the attached proposal has been arrived at by the Proposer independently and have been submitted without collusion and without any agreement, understanding, or planned course of action with any other vendor of materials, supplies, equipment, or service described in the Request for Proposal, designed to limit independent proposals or competition;
- 3. That the contents of the proposal has not been communicated by the Proposer or its employees or agents to any person not an employee or agent of the Proposer or its surety on any bond furnished with the Proposer, and will not be communicated to any such person prior to the official opening of the proposals; and,
- 4. That I have fully informed myself regarding the accuracy of the statement made in this affidavit.

SIGNED _____

FIRM
NAME _____

Subscribed and sworn to before me this _____ day of _____, 20_____

Notary Public

My _____ commission
expires _____,

Proposers E.I. Number _____
(Number used on employer's Quarterly Federal Tax Return)

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FINANCIAL PROPOSAL

Billing Rate Summary In Fee Per Hour
Contract Period February 1, 2019, through January 31, 2024
 (hourly rates)

	General Corporate	Labor and Employment	Meetings
Partners			
Associates			
Legal Assistants			
Clerical Staff			

Please include five year costs for the General Corporate category in the table below.

Contract Period February 1, 2009, through September 30, 2013

General Corporate Services
 (hourly rates by fiscal year)

	Year 1	Year 2	Year 4	Year 4	Year 5
Partners					
Associates					
Legal Assistants					

Please include five year costs for the Labor and Employment category in the table below.

Contract Period February 1, 2019, through January 31, 2024

Labor and Employment Services
 (hourly rates by fiscal year)

	Year 1	Year 2	Year 3	Year 4	Year 5
Partners					
Associates					
Legal Assistants					

ATTACHMENT B

SEALED PROPOSAL

LEGAL SERVICES

2019-05

FIRM NAME: _____

ATT'N:
JUDY DEVRIES-EPPINGA
SENIOR PROCUREMENT SPECIALIST
ITP – THE RAPID
300 ELLSWORTH AVENUE SW
GRAND RAPIDS, MI 49503